

**STATE OF MICHIGAN**  
**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**In the matter of**

**XXXXXX**

**Petitioner**

**v**

**File No. 121028-001-SF**

**Blue Cross Blue Shield of Michigan**

**Respondent**

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**Issued and entered**  
**this 17<sup>TH</sup> day of October 2011**  
**by R. Kevin Clinton**  
**Commissioner**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On April 29, 2011, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* The Commissioner reviewed the request and accepted it on May 6, 2011.

The Petitioner is enrolled for health care coverage through the State of Michigan, a self-funded governmental health plan under Act 495 that is administered by Blue Cross Blue Shield of Michigan (BCBSM). Act 495 authorizes the Commissioner to conduct external reviews for individuals with this type of coverage in the same manner as reviews conducted under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Commissioner immediately notified BCBSM of the external review and requested the information it used to make its final adverse determination. The Commissioner received BCBSM's response on May 16, 2011.

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

## **II. FACTUAL BACKGROUND**

The Petitioner receives health care benefits under the State Health Plan PPO for retirees not eligible for Medicare. Her benefits are described in a benefit book entitled *Your Benefit Guide* (the plan).

On December 14, 2010, the Petitioner was vaccinated for shingles at a pharmacy. The cost was \$189.95. BCBSM denied coverage for the vaccination, stating the Petitioner did not meet the criteria for coverage in the plan.

The Petitioner appealed BCBSM's denial through its internal grievance process. After holding a managerial-level conference, BCBSM maintained its denial and issued its final adverse determination dated March 17, 2011.

## **III. ISSUE**

Did BCBSM properly deny coverage for Petitioner's vaccination?

## **IV. ANALYSIS**

### Petitioner's Argument

During 2009, the Petitioner underwent a series of chemotherapy treatments for breast cancer. In June 2010, she came down with shingles, a skin rash caused by the varicella zoster virus. Her primary care physician recommended she get the Zostavax vaccine because of her history of shingles and breast cancer.

Before getting the injection, the Petitioner's husband states he called the BCBSM "inquiry office" and was told the vaccination was a covered benefit.

The Petitioner also points out that a publication for State of Michigan retirees from BCBSM entitled "For Your Benefit" (Volume 4, 2010) contained an article about shingles that stated, "This vaccination is covered under your State Health Plan PPO." The article also noted that people with medical conditions, like cancer, that keep the immune system from working properly are at a greater risk for shingles.

The Petitioner believes the shingles vaccination was medically necessary for her and BCBSM should be required to pay for it.

### BCBSM's Argument

Under the plan (pp. 37 - 39) shingle vaccinations are covered if certain criteria are met:

Your coverage pays for the preventive services listed below when they're received from network providers.

\* \* \*

- Zostavax (Shingles) - For adults age 60 and older. Also covered when given by a visiting nurse agency or a health department.

BCBSM advises the vaccination is not a covered benefit because the Petitioner does not meet the criteria -- she was only 58 years old at the time. BCBSM further states that even if the Petitioner had met the age criterion, the vaccination would not have been covered because it was administered in a pharmacy and not by a PPO network provider, a visiting nurse agency, or a health department.

BCBSM also states that it was unable to locate any record of a telephone call from the Petitioner's husband before the date of service and therefore does not believe it provided misleading information.

BCBSM argues it must administer health care benefits according to the terms of the plan and in this case the Petitioner's vaccination is not a covered benefit.

### Commissioner's Review

Under the benefit plan, a vaccination for shingles is covered for persons age 60 or older when provided by a PPO network provider, visiting nurse agency, or health department. There is no exception to these requirements, even for medical necessity.

According to BCBSM, the Petitioner was not yet 60 years old when she received the vaccination. BCBSM also notes that the pharmacy is not a PPO network provider nor a visiting nurse agency or health department. There is nothing in the record that contradicts these assertions. Therefore, the Petitioner's shingles vaccination is not a covered benefit under the benefit plan.

BCBSM disputes the Petitioner's contention that she was misinformed about her coverage. The Commissioner cannot resolve that kind of factual dispute because the Patient's Right to Independent Review Act (PRIRA) lacks the hearing procedures necessary to make findings of fact based on evidence such as oral statements. Under PRIRA, the Commissioner's role is limited to determining whether health care benefits were administered properly under the terms of the plan and state law.

The Commissioner concludes that BCBSM correctly applied the terms of the Petitioner's coverage.

#### **V. ORDER**

Blue Cross Blue Shield of Michigan's March 17, 2011, final adverse determination is upheld. BCBSM is not required to pay for the Petitioner's December 14, 2010, shingles vaccination.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, P.O. Box 30220, Lansing, MI 48909-7720.